

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 819 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARJITSINGH DILIPSINGH BAGGA

Versus

STATE OF GUJARAT

Appearance:

MS SM AHUJA for Petitioner

Mr.M.A.Patel, Addl.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 08/09/98

ORAL JUDGEMENT

1. Heard Miss S.M.Ahuja for petitioner. Rule.
Ld.APP Mr.M.A.Patel waives service of rule. By consent of parties petition is take up for final hearing.
2. That a complaint has been lodged against the present petitioner at Satellite PS vide I.Cr.No.3093/98 on or about 1.4.98 in respect to offence made punishable under section 63 & 68-A of the Copy Right Act, 1957.

That during investigation 2300 Cinematographic Video Cassettes were seized by the police by way of muddamal under Receipt No.112/98. That on completion of investigation said muddamal has been produced in the competent court, i.e. Judicial Magistrate First Class, Court No.5, Ahmedabad (Rural) at Mirzapur, Ahmedabad. That pending further enquiry and trial the petitioner moved an application, dated 15.5.98 under section 451 Cr.P.C., 1973 claiming temporary custody of said muddamal articles. The petitioner showed willingness to produce the same as and when required by the court and to abide by any condition imposed by the court. That the court called for the report of the Investigating Officer and after hearing the parties, vide impugned order dated 25.5.98 rejected the said application. The petitioner carried the matter to the court of Ld.Sessions Judge, Ahmedabad(Rural), Dist.Ahmedabad by filing Criminal Revision Application No.59/98. That the Ld.Addl.Sessions Judge vide order dated 29.7.98 rejected the said revision application.

3. That being aggrieved and dissatisfied by the above stated both orders, the petitioner has preferred the present Special Criminal Application with a prayer to quash the impugned orders of the Ld.5th JMFC and Ld.Addl.Sessions Judge, Ahmedabad (Rural)in Cri.Case No.751/98 and Cri.Revn.Appln.No.59/98 and to give appropriate direction to grant the application of the petitioner under section 451 Cr.P.C. The petitioner also has prayed for interim relief in terms of substantive relief pending admission and final hearing of the present petition.

4. During the hearing of the present petition, Ld.Advocate for the petitioner has agreed to the suggestion that as earlier suggested by the Ld.JMFC, Court No.5, Ahmedabad(Rural) the petitioner is ready and willing to take custody of said muddamal articles in a sealed container and to retain the same by giving security of appropriate bond and filing undertaking that the muddamal shall be produced before the court as and when required. However, the petitioner be given liberty to rewind the said cassettes on a periodical intervals in the presence of officer appointed by the court so as to keep the said cassettes in proper condition by rewinding the same.

5. Ld.APP-Mr.M.A.Patel has opposed the application contending that the muddamal articles are relevant and has material evidence to establish the said charge against the present petitioner and during the process of

so-called rewinding of cassettes to keep in proper condition the evidence might be erased or destroyed and hence the application may be rejected.

6. It is undisputed that pending trial if the muddamal articles are lying without providing any appropriate protection the cassettes will be deteriorated and may not be even useful as an evidence at the time of trial. It also can not be disputed that the court authorities can not provide any arrangement to keep the muddamal articles in appropriate condition and to prevent deterioration of the same by passage of time. In the said view of the matter, it would not be unjust or improper if the request of the petitioner to keep the muddamal articles in a safe custody is accepted by putting the petitioner to appropriate terms, and hence, the following directions:

(I) That the order of the Ld.Addl.Sessions Judge, Ahmedabad (Rural) Mirzapur at Ahmedabad, dated 29.7.91 passed in the proceedings of Cri.Revn.Appln.No.59/98 and the order of the Ld.JMFC, Court No.5, Ahmedabad (Rural) dated 25.5.98 passed in the proceedings of Cri.Reg.No.I 3093/98 of Satellite PS (Cri.Case No.751/98) are hereby quashed and set aside.

(II) That the muddamal articles consisting 2300 video cassettes seized by Satellite in connection with the offence registered vide Cr.No.3093/98 and produced before the Court No.5, Ld.JMFC, Ahmedabad (Rural) be returned to the petitioner by way of temporary custody on the following terms:

(a) That the petitioner shall make arrangement to pack the video cassettes-muddamal articles in a packet-type container after due verification with panchnama. That the said container shall be sealed by the authorised officer of the court No.5, Ld.JMFC, Ahmedabad (Rural), Ahmedabad.

(b) That the petitioner shall furnish personal bond of Rs.50,000/- and one surety to comply with the condition that the said container of muddamal articles shall be produced in the same sealed condition before the Court as and when required.

(c) That the petitioner shall be at liberty to apply to the trial court to reopen the said container

in the presence of authorised officer or any expert appointed by the court and to rewind the said cassettes so as to prevent the cassettes from deteriorating and after due verification repack the same in the same condition for further custody.

- (d) The petitioner shall be entitled to apply for such request at an interval of not less than one month from the date of taking custody and entire costs of such process for verification and retaining the expert to supervise the process and verification shall be borne by the petitioner.

7. On the basis of above stated order, petition stands partly allowed. Rule is made absolute accordingly D.S.permitted.

...